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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Amendment of the Commission's
Rules to Establish New Personal
Communications Services

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GEN Docket No. 90-314
ET Docket No. 92-100

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OPPOSITION TO "EMERGENCY PETITION"

Telocator, the Personal Communications Industry Association, hereby opposes the untimely petition filed by Apple Computer, Inc. ("Apple") in the above-captioned proceeding that fundamentally relies upon a proposal that has been previously considered and rejected by the Commission.¹ In an apparent attempt to preclude opposition to its flawed proposal to "repack" the existing 2 GHz microwave users,² Apple has hypothesized a self-styled "emergency" to justify the filing of its petition hours before the FCC's Personal Communications Services ("PCS") item is placed on the Sunshine Agenda. Because Apple's petition amounts to no more than a recycled collection of unsubstantiated and previously rejected theories, Telocator strongly urges the Commission to reject Apple's procedural ploy and requests the Commission to continue with its expeditious deliberations on PCS policy issues that were actually addressed and discussed in the public record on PCS.

¹ Apple Computer, Inc. Emergency Petition, GEN Docket No. 90-314, ET Docket No. 92-100 (filed September 13, 1993) [*"Apple Petition"*].

² Apple Computer, Inc. Petition for Reconsideration, ET Docket No. 92-9, RM-7981, RM-8004 (filed September 13, 1993).

Apple explicitly recognizes that it has filed its petition immediately prior to a impending Commission decision on PCS.³ Although Apple does not acknowledge that the FCC's Sunshine Rules will virtually preclude all public response to its petition, it nevertheless attempts to justify the timing of its filing through the expedient of a self-declared emergency. As discussed below, Apple's "emergency" is caused by nothing more than Apple's continued disdain for the public processes that have previously rejected its self-serving proposals.

In particular, Apple has had--and has taken advantage of--innumerable opportunities to present the ideas in its "emergency" petition to the Commission. The regulatory path that will culminate in the FCC's September decision has created a record that includes comments and reply comments on scores of independently-filed petitions for rulemaking on personal communications services, including one by Apple; a Notice of Inquiry on PCS; an *en banc* hearing on PCS; an FCC policy statement on PCS; and a Notice of Proposed Rule Making on PCS. In the related docket to examine the use of the 2 GHz bands, there have been three Report and Orders, one Memorandum Opinion and Order, and no less than three Notices of Proposed Rule Making.

In the almost four years since these proceedings were initiated,⁴ Apple has had ample procedural opportunities to defend the specifics of its repacking plan without denying the public the right of reply. There is nothing in the *Apple Petition* that could not have been advanced months, or even years, before its filing. And, if there were any merit to the plan,

³ See *Apple Petition* at 1 & n.2.

⁴ See *Petition for Rulemaking of Cellular 21, Inc.*, RM-1740 (filed Sept. 22, 1989).

the public could have commented on the plan and incorporated it into broader PCS policies and goals. Apple, however, has elected to ignore public processes and has invented a spurious "emergency" to camouflage what are plainly, and simply, late filed comments.

In conclusion, Telocator believes that Apple's "emergency" petition is a wholly illegitimate attempt to derail a four year long regulatory process moments before a Report and Order is issued. Apple's utter disregard for the process and the record developed in this proceeding should not be countenanced. The *Apple Petition* should be summarily dismissed as untimely filed comments.

Respectfully submitted,

**TELOCATOR, THE PERSONAL
COMMUNICATIONS INDUSTRY
ASSOCIATION**

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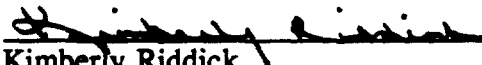
September 15, 1993

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 1993, I caused copies of the foregoing "Opposition to 'Emergency Petition'" to be mailed via first-class postage prepaid mail to the following:

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